

Procedural Information for Personal Representatives
(i.e., Executors and Administrators)
Serving in the Davidson County Seventh Circuit Court (Probate Division)

This procedural information guide is provided to you only as a courtesy of the Probate Court Clerk's Office of Davidson County as they are not required to furnish you with any information concerning the administration of a decedent's estate. This information packet should not be used as a guide for administering an estate in another county in Tennessee as their probate procedures may be different than those practiced in this Court. The information provided in this guide pertains to procedural matters affecting this office only.

As personal representative you should immediately discuss the statutory procedures and responsibilities regarding the administration of this estate with your attorney. If you feel you may have difficulties performing your duties, you should let your attorney know this information immediately. Do not delay in notifying your attorney of any problems or concerns as this may result in very serious consequences. You should never contact the Clerk's office to discuss any legal matters involving this estate. As much as the Clerk's Office would like to help you, they are not allowed to do so. For any legal information, you should always consult your attorney.

Your attorney represents your interests as personal representative and is considered by the Court to be the attorney of record for this estate. This arrangement continues until the estate is closed, the attorney withdraws or is substituted.

Your attorney will make prior arrangements for you to either personally appear in open Court before either the Judge or the Probate Master. You should understand that the Court should be convinced that your appointment as Personal Representative is proper, therefore, it is imperative that you meet with your attorney before any such hearings are conducted to discuss your duties and responsibilities. If it is determined by the Judge or the Master that you are not a fit and proper individual for the task of administering an estate, you may not be allowed to serve.

Opening the Estate Administration

After the proper pleadings are filed with the Clerk and all interested parties have been notified, a hearing is conducted before either the Judge or the Master to formally appoint you as the Personal Representative for the estate. Once the hearing is completed, you will take your **Oath** that you will properly perform your duties as the personal representative of this estate to the best of your ability and the Clerk's Office will issue you

Letters of Authority, also known as either **Letters Testamentary** or **Letters of Administration**.

As personal representative of the estate, you and your attorney will be required to execute a **Cost Bond** in order to ensure the payment of any court costs which might accrue during the course of the administration of the estate. Initial filing fees will be paid at the time of filing. Any accrued court costs are expected to be paid annually if the estate remains open after one year and any remaining court costs will be paid at the end of the estate administration.

Once you are appointed, you may need to establish an estate bank account with a financial institution which either returns the original cancelled checks to you or provides you with imaged copies of the checks. The imaged versions which banks now provide with the monthly statements may be used in lieu of the original checks. If your financial institution cannot provide you with either the cancelled checks or imaged copies, it will be necessary to go to another. **Never use Cashier's Checks** to conduct estate business.

Even though the Local Rules of Court in Davidson County require prior Notice of any hearing, within sixty (60) days you must execute and file an **Affidavit** pursuant to T.C.A. 30-2-301(b) with the Clerk. For your convenience, a form Affidavit for this purpose is posted in the "Forms" section of the probate web page or it may be obtained in person from the Clerk's Office. Be sure to include the specific names and addresses of the beneficiaries on the affidavit form even if you have to use additional pages.

Also within sixty (60) days you must file an **Inventory** of the estate's assets pursuant to T.C.A. 30-2-301(a), unless the filing of the Inventory is waived by the Will or all of the residuary distributees or legatees agree to waive the filing of the Inventory by a written statement to the Court. The Clerk will mail a Notice to you if this duty is not performed in accordance with the statute. For your convenience, an Inventory form is posted in the Forms section of the probate web page or it may be obtained in person from the Clerk's Office. A copy of the Inventory must be forwarded to all interested parties of the estate and a Certificate of Service should be attached to it. Even though the filing of the Inventory may be waived, you should still prepare and maintain an accurate Inventory in the event one is ever requested. An Inventory is required to determine tax liability. Consult your attorney for information regarding the Inventory.

Once an estate is opened, the law requires that the estate publish for creditors. The Clerk's Office handles this transaction for you and an additional separate check, made payable directly to the paper is required at that time. The Clerk's Office will mail you and your attorney a copy of the **"Notice to Creditors"** in approximately four (4) weeks. Pursuant to T.C.A. 30-2-306(e) a copy of the Notice must be mailed or delivered to all known (actual) creditors or any creditors who are reasonably ascertainable, otherwise, legal problems may develop.

A **Certificate of Service** is required by this Court on all documents filed in the

Clerk's Office which certifies that a copy of the document has been either mailed or delivered to all the interested parties of the estate. Not having a certificate of service attached will result in documents not being approved for recording. Further, the Clerk may refuse to accept documents without a certificate of service.

Your attorney or accountant may need to file an **Inheritance Tax Form** on behalf of this estate with the Tennessee Department of Revenue. Pursuant to T.C.A. 67-8-420(a), a copy of the tax receipt or certificate may need to be filed with the Clerk indicating that all inheritance taxes have been paid or that no inheritance taxes are due. "Short-form" inheritance tax forms are available in the Probate Clerk's office. The Department of Revenue's mailing address is at the top of the form and they will return the receipt to you by mail. Additional tax forms may be obtained by calling the forms division of the Tennessee Department of Revenue or by accessing their website. The Clerk is not authorized to answer any questions relating to this form, we merely provide it to you as a courtesy. Please consult your attorney for information regarding this form and whether or not it must be filed with the Tennessee Department of Revenue. **We do not provide Form SS-4 to file for the Federal Estate Taxpayer Identification Number (EIN).**

If certain statutory requirements are met, the Personal Representative of the estate, pursuant to T.C.A. 67-8-409(g), may file an **Inheritance Tax Affidavit** with the Clerk's Office in lieu of obtaining a Release from the Tennessee Department of Revenue.

If the estate remains open over fifteen (15) months, **Annual Accountings** must be filed with the Clerk, unless the Will waives the filing of an Accounting or all the residual distributees or legatees agree to waive the filing of the Accountings by a statement to the Court. A copy of all Annual Accountings must be mailed or delivered to all interested parties of the estate and a Certificate of Service must be attached to it. If you fail to file the Accounting, you will be sent a Notice to remind you that an Accounting (and/or Status Report) is due. If an Accounting is still not filed, you will be summoned to appear before the Clerk. Further, if you do not appear, the Court will issue an Order for Show Cause. You should consult your attorney when filing any Accounting with the Clerk.

Please do not contact the Clerk's Office to extend the accounting period. The computerized system of case monitoring does not allow the Clerk's Office to extend the accounting deadline. In order to extend the accounting period, your attorney must file a Motion with the Court and ask for a continuance.

Pursuant to a specific Order regarding case management, this Court requires an **Estate Status Report (this Report is never waived)** to be filed annually with the Clerk's Office until such time that the estate is closed. Essentially, it is due whenever an Accounting is due to be filed, even though Annual Accountings may be waived. The Status Report should specifically detail why the estate remains open, what remains to be completed before the estate is closed and how long it will take to close the estate. You should contact your attorney when the time for the filing of the Status Report is approaching, which is the anniversary date of your appointment as personal

representative. Be sure to note that if an Accounting is due to be filed with the Clerk's Office, the mere filing of a Status Report is not sufficient to eliminate the accounting requirement. For your convenience, the Clerk's Office has posted a form for Status Reports in the "Forms" section of the probate web page or the form may be obtained in person from the Clerk's Office.

Pursuant to T.C.A. 71-5-116(c)(2), before any estate may be closed, with respect to a decedent, who at the time of death, was over the age of fifty-five (55) and enrolled in the TennCare program, the personal representative must file with the Clerk a **Release from the TennCare Bureau** evidencing payment of all medical assistance benefits, premiums, or other such costs due from the estate under law, unless waived by the bureau. Many, if not most estates, will be exempt from having to obtain the foregoing release from the TennCare Bureau. However, if the estate is exempt from the statutory requirement of having to obtain a release from the TennCare Bureau, the Court, nevertheless, requires the personal representative to file a written statement or declaration stating such before the estate may be closed.

Closing the Estate Administration

There are two (2) methods to close out an estate in Davidson County Probate Court. The estate may be closed by filing either a detailed accounting before the Clerk or by filing statements in lieu of a detailed accounting with the Clerk. If all goes well with the administration and none of the beneficiaries are minors or incompetents, we would encourage you to use the statement in lieu method because you do not have to provide for the inspection of the original cancelled checks (or imaged copies) or the specific listing of all receipts and all disbursements made on behalf of the estate. If even one beneficiary does not agree to sign or if you anticipate any problems, it may be necessary to present a detailed accounting to the Clerk.

It is very important to specifically follow either one of the following two procedures. Please do not simply bring cancelled checks as evidence of complete distribution to the Clerk's Office asking that the estate be closed on that basis. These two procedures should be followed closely as they are set forth by statute. It is also very important not to confuse the two procedures. For example, do not attempt to file a Receipt and Waiver of Appearance at the Detailed Accounting when you are closing with Statements in Lieu of a Detailed Accounting. A Receipt and Waiver is not receipting and waiving an Accounting, it is receipting and waiving an appearance at a detailed accounting.

If minors or incompetents are residual beneficiaries in the estate, you are automatically required to file a Detailed Accounting with the Clerk. In this Court, any distribution to minors or incompetent persons requires specific court approval and the Court may even require a legal guardianship (different from custodial guardianship) to be opened in the case of a minor and may require conservatorship proceedings in the case of

an incompetent adult. Further, do not automatically assume you can make distributions to minors under the Uniform Gifts to Minors Act. In this Court, any distribution under this Act requires specific court approval.

If all the competent adult beneficiaries are in agreement, the personal representative and distributees may respectively file two (2) separate statements regarding their rights and responsibilities and waive the requirement of the presentation of a Detailed Accounting before the Clerk. These two (2) separate statements work together in combination and consist of a **Personal Representative Statement** and a **Distributee Statement**. For your convenience, the Clerk's office has posted a Personal Representative Statement form and a Distributee Statement form in the Forms section of the probate web page or these forms may be obtained in person from the Clerk's Office.

Along with the statements, an **Order to Close without Detailed Accounting** is required. You cannot use this method if even one heir refuses to sign a statement and you cannot use this method if any residual beneficiary is a minor or an incompetent person.

If it becomes necessary to close the estate with a **Detailed Final Accounting** you must first consult with your attorney. There are many legal issues which should be considered before proceeding with this method and your attorney must be involved every step of the way.

The personal representative and their attorney must present to the Clerk on a date certain and time certain (preferably between 10 A.M. and 3 P.M. on any business day), with proper Notice (along with a copy of the proposed accounting) given to all interested parties, a written accounting indicating all funds/items received and all funds/items disbursed. This accounting must include the original cancelled checks (or imaged copies) and/or receipts supporting each expenditure (which may or may not be returned to you after the presentation), a **Receipt and Waiver of Appearance** or **Notice of Detailed Final Accounting** (certified, return receipt attached to copy of form) from each competent adult residual beneficiary.

Once any Detailed Accounting is presented to the Clerk, it takes a minimum of thirty (30) days for its review to be completed and for the statutory exception period to toll. This time may even be extended for whatever reason. Please do not contact the Clerk immediately after the thirty (30) day period and ask if the accounting has been approved because they are reviewed in the order in which they are received and sometimes the workload increases to the point that delays may be experienced. In this Court, there is no reason to file additional pleadings to approve an accounting as it either gets approved upon its completed review or set for hearing because of various deficiencies.

Other Items of Interest

Forms: As referenced in part above, the Probate Court Clerk has several forms available for your convenience in administering an estate. These forms are provided as a courtesy by the Clerk's Office, and they may be obtained in person from the Clerk's Office or they may be obtained from the "Forms" section of the probate web page.

Claims: If a claim is filed against the estate, the Clerk will mail you and your attorney a copy of the claim. You should then consult your attorney as to how you want to proceed regarding the claim, as there are many legal issues to consider. When closing the estate, it is necessary to verify that all claims have been paid, released, settled or adjudicated. A cancelled check indicating that a claim has been paid can only be used if it is payable and endorsed for the exact amount of the claim. You will need to bring the Clerk the original cancelled check as it must be verified. Otherwise, it will be necessary for you to contact the claimant and ask them to release their claim. If the claim was settled or adjudicated, an Order must be entered regarding the claim.

Specific Bequests: When specific bequests made in a Will are honored, you should ask the competent adult recipient of the bequest to acknowledge their receipt in writing and file the receipt with the Clerk as a Specific Bequest Receipt. Cancelled checks indicating that a specific bequest has been paid and received are allowable only when the Clerk can verify the endorsement. Please try to obtain a Specific Bequest Receipt from the individual. Never make any distributions, cash or otherwise, to minors or incompetent individuals without court approval.

Court Costs: Accrued court costs should be paid annually if the estate remains open longer than one year. Court costs related to the Notice of Publication to Creditors and any Notices and/or Citations and for additional Letters will be added to your account. Court costs are subject to change without notice and are determined by statute, and not by the Clerk. Additionally, court costs may continue to accrue at any time during which the estate remains open and any unpaid accrued balance is expected to be paid when the estate is closed. The Court will not sign an Order closing the estate so long as there are unpaid court costs in the case.

Statutory and Court-Ordered Deadlines: Failure to timely perform statutory duties may result in "Notices" and "Citations to Appear" being either mailed or served on you. The Court may also issue an "Order for Show Cause" requiring you to appear in court for failure to perform your duties. Failure to properly account for the assets over which you have been appointed may also result in the Court ordering a judgment against you for the value of those assets, making you personally responsible. The court costs and legal fees for these procedures may also be assessed against you.

Other Issues: Please be advised that there are various other issues related to an

estate administration which are too numerous to be detailed in this procedural guide. Even though the information provided in this guide is substantial, there is much information and many issues, both legal and non-legal, which are not addressed here.

Other Duties: All documents should be photo-copied and mailed out to all interested parties of the estate, including creditors, as they are filed in the Clerk's office. All correspondence with the Clerk's office should include the docket number. You must notify the Clerk's office in writing of any and all address changes. The mailing address is located on our "Contact Us" page.